IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18179 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE M.C.PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MUKUNDKUMAR TRIKAMBHAI CHAUHAN - Petitioner(s)

Versus

STATE OF GUAJRAT NOTICE TO BE SERVED THROUGH & 3 - Respondent(s)

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Appearance :

MR IQBAL M MALIK for Petitioner(s) : 1
MR NV ANJARIA for Respondent(s) : 1
MR JB PARDIWALA with MS SNEHA JOSHI for Respondent(s) : 3
MR SIRAJ GORI, AGP for Respondent(s) : 2 and 4

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CORAM : HONOURABLE MR.JUSTICE B.J.SHETHNA
and
HONOURABLE MR.JUSTICE M.C.PATEL

Date : 09/09/2005

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE B.J.SHETHNA)

Rule. Learned counsel Shri Nilay Anjaria appears and waives service for respondent no.1 – Election Commission, learned AGP Shri Gori waives service for

respondents no.2 and 4 and learned counsel Ms. Joshi waives service for respondent no.3 – Nagarpalika. At the joint request of the learned counsel for the parties, this matter is taken up today and finally disposed of by this order.

2. The petitioner was elected as Municipal Councillor of respondent no.3 – Balasinor Nagarpalika in the General Election held in the month of January, 2002. He was thereafter elected as Vice-President of the respondent Nagarpalika in a general meeting held on 12th March, 2003 for a period of one year and three months as there was no consensus regarding the term of the office of the Vice-President among the members who were present in the meeting (Annexure 'A'). Thereafter, once again, in a meeting held on 11th June, 2004, he was elected as Vice-President for a further period of one year and three months (Annexure 'B'). His said second term comes to an end on 11th September, 2005 i.e. day after tomorrow. The term of the President as well as Vice-President of the respondent Nagarpalika was expiring, therefore, the respondent no.2 – District Collector, Kheda, by his order dated 23rd August, 2005 (Annexure 'D'), ordered to hold the elections for the post of President and Vice-

President of respondent Nagarpalika on 12th September, 2005 at 12.00 noon i.e. three days from today. This is challenged in this petition by the present petitioner under Article 226 of the Constitution.

3. Learned counsel Shri Malik for the petitioner, relying on the circular dated 17th December, 2002 (Annexure 'C') issued by the Deputy Secretary of the respondent – State of Gujarat, vehemently submitted that in absence of any clarification made under the Act regarding the term of the Vice-President, it co-existed with the term of the Municipality which is going to expire somewhere in March, 2008. He, therefore, submitted that the respondent Collector could not have issued such order dated 23rd August, 2005 (Annexure 'C') for holding election for the post of Vice-President.

4. Before appreciating the contention of Mr. Malik for the petitioner, the old Section 33 of the Gujarat Municipalities Act, 1963 (for short, 'the Act') is required to be considered which reads as under:

> 33. (1) **Term of office of President and Vice-President** - Save as otherwise provided in this Act, a president or vice-president

> shall hold his office for such term as the municipality shall, previous to his election determine, not being less than two years or the residue of the term of office of the municipality, whichever be less, and not exceeding [five years] and he shall be eligible for re-election:
>
> Provided that the term of office of such president or vice-president shall be deemed to extend to and expire with the date on which his successor is elected.

A bare reading of the old Section 33(1) of the Act makes it clear that there was a clear provision for the term of President as well as Vice-President of the Nagarpalika. However, with the Gujarat Act No.3 of 2000, Section 33 was amended and substituted by the following:-

> 33. **Term of office of President and Vice-President**
>
> (1) (a) The term of office of the President of a municipality constituted upon the general election held after the commencement of the Gujarat Municipalities (Amendment) Act, 2000 shall be two and a half years.
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> (b) The term of office of the President of a municipality existing on the

commencement of the said Act, shall be one year.

(c) Subject to the other provisions of this section, the President shall be eligible for re-election.

5. From the above, it is clear that though Section 33 refers to term of office of President and Vice-President, it seems that words “or Vice-President” seems to have been omitted, may be for any reason. Be that as it may.

6. It appears that earlier, term of the post of Vice-President was fixed under the Act but due to some or the other reasons, it was not mentioned under the Amended Section 33 of the Act. Thus, therefore, there was no clear provision regarding the term of the post of Vice-President of the Nagarpalika. From the experience, it was found that in the first meeting in many Nagarpalikas, term of the Vice-President could not be fixed and, therefore, many Nagarpalikas applied to the Government for its proper guidance. In absence of any clear provision regarding term for the post of Vice-President, with the consultation of the Legal Department, Deputy Secretary of the State of Gujarat, had issued a circular dated 17th December, 2002 (Annexure 'C') stating that in

absence of any clear provision, the term of the post of Vice-President of the Nagarpalika co-exists with the term of the Nagarpalika. Harping on this, Mr. Malik submitted that once the Government has made it clear by a circular dated 17th December, 2002, then the term of the post of Vice-President of the Nagarpalika would continue till the term of the Municipality and the respondent Collector had no jurisdiction to declare the election for the post of Vice-President by his order dated 23rd August, 2005 as there are still 2½ years more to go for the term of Nagarpalika and the petitioner be treated as Vice-President of the respondent Nagarpalika till the term of the Nagarpalika itself comes to an end.

7. Learned counsel Shri Pardiwala appearing for the respondent Nagarpalika, however, submitted that when the petitioner was elected as a Vice-President by the members of the Nagarpalika in its meeting on 12th March, 2003, there was no consensus about his term. Therefore, by a majority decision, it was decided to fix the term of the post of Vice-President for a period of one year and three months. At that time itself, the Presiding Officer who presided over that meeting, had already made it clear that as per the circular of the Government issued on 17th

December, 2002, the term of the post of Vice-President would co-exist with the term of the Nagarpalika. In spite of it, the members who remained present during the meeting decided to fix the term of the petitioner as Vice-President for a period of one year and three months. After the said term of one year and three months expired, once again election for the post of Vice-President was held on 11th June, 2004 and the petitioner was declared uncontested but his term was once again fixed for one year and three months in spite of the aforesaid circular dated 17th December, 2002 being brought to the notice of the members of the Nagarpalika who were present in the meeting. Thus, it was clear from the bare reading of the circular dated 17th December, 2002 (Annexure 'C') issued by the State Government that term of the post of Vice-President of Nagarpalika would co-exist with the term of Municipality, if it is not fixed at the first instance when the election of Vice-President is held. That is not the case here. In the instant case, as stated earlier, not once, but twice the election of the post of Vice-President of respondent Nagarpalika was held and on both occasions, the members who remained present at the time of the meeting fixed the term of Vice-President for a period of one year and three months. In that view of the

matter, it would now not be open to the petitioner to urge that the term of the post of Vice-President co-existed with the term of Municipality as per the circular dated 17th December, 2002 (Annexure 'C') issued by the State Government. Learned counsel Shri Nilay Anjaria appearing for the Election Commission as well as learned AGP Shri Gori for the respondents - Collector and State of Gujarat have supported the submission made by Mr. Pardiwala and submitted that this court should not interfere with the election which is to be held on 12th September, 2005.

8. In view of the above discussion, we do not find any substance on merits in this petition. Accordingly, it fails and is hereby dismissed. Rule discharged. No costs.

(B.J. Shethna, J.)

(M.C. Patel, J.)

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